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JUN 22 2009

OFFICE OF PETITIONS

In re Application of :
Michael S. Zaharkin :
Application No. 10/023,440 : ON PETITION
Filed: December 14, 2001 :
Attorney Docket No. 962.007US1 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, or in the alternative to revive under 37 CFR 1.137(b), filed May 12, 2009.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a response to the non-final Office action mailed September 3, 2008. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on December 4, 2008. The Office mailed a Notice of Abandonment on March 17, 2009.

Petition under 37 CFR 1.181:

To establish non-receipt of an Office action, a petitioner:

must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office

action would have been entered had it been received is required.¹

In addition, the Manual of Patent Examining Procedure § 711.03(c) also states:

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the **master docket** for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report **showing all replies docketed for a date three months from the mail date of the non-received Office action** must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

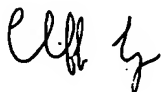
Petitioner has not submitted a copy of a master docket record showing all his replies docketed for a due date of December 3, 2008. Rather, the docket record submitted by petitioner is a copy of an incoming mail log, showing all replies received from the Office, arranged in order by date mailed.

Petition under 37 CFR 1.137(b):

With the instant petition, petitioner has paid the petition fee, submitted the required reply in the form of an Amendment, and made the proper statement of unintentional delay.

The application is being forwarded to Group Art Unit 2178 for consideration of the Amendment, filed May 12, 2009.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

¹ MPEP 711.03(c).